

Staff Summary Report



Council Meeting Date: 12/4/03

Agenda Item Number: _____

SUBJECT: Request approval of Resolution No. 2003.75 authorizing the submission of a Section 108 Loan Guarantee application to Housing and Urban Development in the amount of \$7 million.

DOCUMENT NAME: 20031204dsnc02 **RIO SALADO MASTER PLAN (0112-07-03)**
Resolution No. 2003.75

SUPPORTING DOCS: None

COMMENTS: N/A

PREPARED BY: Neil Calfee, Principal Planner (350-2912)

REVIEWED BY: Melanie Hobden, Development Services Manager (350-8069)

LEGAL REVIEW BY: Marlene Pontrelli, City Attorney (350-8120)

FISCAL NOTE: Funding for the loan repayment will be portion of the sales tax revenue generated by the Rio Salado Marketplace Project.

RECOMMENDATION: **Approval of Resolution 2003.75 as presented.**

ADDITIONAL INFO: On September 25, 2003 the City Council approved a Development and Disposition Agreement (DDA) with Miravista Holdings for a multi-phase brownfield redevelopment project within the University/Hayden Butte Redevelopment Area 5. The DDA calls for the City to secure up to \$7 million in HUD Section 108 loan guarantee funding to be used in conjunction with a \$1 million HUD Brownfield Economic Development Initiative grant recently awarded to the City. The loan funding will be used for on-site environmental remediation, the grant will be used to carry the first two years of interest-only loan payments.

Funding for the repayment of the loan will be generated by the development of nearly a million square feet of retail space. Per the DDA, at least 30% the gross sales tax revenue goes directly to the City, the Section 108 payment is then made from the proceeds net of the City's initial distribution. Remaining funds are then distributed to the Developer for improvement district debt service and repayment of the project's extraordinary up-front costs.

Acknowledging that the revenue stream to repay the loan has yet to be realized, multiple layers of repayment security have been provided in the DDA. First is the \$1 million BEDI grant, which will be used to carry the interest-only payments of the first two years of the loan. Should the project fail to generate sufficient tax revenue after that initial period, is a \$900,000 City reserve deposit that will cover the remaining shortfall. If the reserve deposit is exhausted, the developer is required to make the loan payments until sufficient tax revenue is generated.

RESOLUTION NO. 2003.75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE AUTHORIZING SUBMISSION OF A SECTION 108 LOAN GUARANTEE APPLICATION TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WHEREAS, the City of Tempe has determined that a high priority exists for economic development and job creation activities and that the proposed Rio Salado Marketplace project within the University/Hayden Butte Redevelopment Area 5 meet these priorities; and

WHEREAS, on September 25, 2003 the City Council approved the Rio Salado Marketplace Development and Disposition Agreement with Miravista Holdings. The agreement requires City of Tempe to secure up to \$7 million in HUD Section 108 funding; and

WHEREAS, the proposed project is included in the City's adopted One Year Action Plan of the Consolidated Plan; and

WHEREAS, the Section 108 Loan Guarantee program, implemented by the United States Department of Housing and Urban Development (HUD), is designed to provide funds to assist with these types of projects; and

WHEREAS, under the Section 108 Loan Guarantee program, the City can borrow up to five years worth of its annual Community Development Block Grant allocation, and can take up to twenty years to repay the principal and interest; and

WHEREAS, the City is requesting a total of \$7,000,000 in Section 108 Loan Guarantee funds to assist with the implementation of the Rio Salado Marketplace project; and

WHEREAS, the City has received conditional approval of a HUD Brownfields Economic Development Initiative (BEDI) grant in the amount of \$1,000,000 to assist with the economics of the Rio Salado Marketplace project and which said (BEDI) funds cannot be expended without an approved Section 108; and

WHEREAS, the City Manager is authorized to submit the Section 108 Loan Guarantee application and amendments thereto and all understandings and assurances contained therein, and to act in connection with the application to provide such additional information as may be required; and

WHEREAS, the City intends to use revenue generated by the Rio Salado Marketplace project as the source of repayment funding. Interim payments prior to project stabilization shall be made using BEDI grant funding, City reserve deposit dollars, and funding from the project developer; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Tempe resolves as follows:

Section 1. The City hereby certifies and assures with respect to its application for a loan guarantee pursuant to Section 108 of the Housing and Community Development Act of 1974, as

amended, that it has the legal authority to make the pledge of grants required under 24 CFR 570.705 (b) (2).

Section 2. As prerequisites for submission of the application to HUD, the City certifies that it has:

(a) Furnished citizens with information required by Section 570.704(a) (2)(i) of Title 1 of the Housing and Community Development Act of 1974, as amended;

(b) Held at least one public hearing, on December 4, 2003 to obtain the views of citizens on community development and housing needs; and

(c) Prepared its application in accordance with Section 570.704(a)(1)(iv) of Title 1 of The Housing and Community Development Act of 1974, as amended, and made the application available to the public.

Section 3. The City has and will continue to follow a detailed citizen participation plan that meets the requirements described in Section 570.704(a)(2) of Title 1 of the Housing and Community Development Act of 1974, as amended.

Section 4. The City has and will continue to affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with:

(a) Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 42 U.S.C. 2000d et seq.); and

(b) The Fair Housing Act (42 U.S.C. 3601-20).

Section 5. Will expend in the aggregate, at least 70 percent of all CDBG funds, as defined in Section 570.303(e) of Title 1 of The Housing and Community Development Act of 1974, as amended, during the one, two, or three consecutive years specified by the City for its CDBG program on activities which benefit low/moderate income persons, as described in criteria in Section 570.208(a) of the Act.

Section 6. The City has and will continue to comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in Section 570.606.

Section 7. The City has and will continue to comply with other provisions of the Act and with other applicable laws.

Section 8. The City has and will continue to Certify regarding debarment, suspension, and other responsibility as follows:

(a) The prospective recipients of the Section 108 Loan Guarantee funds and all of their contractors will certify to the best of their knowledge and belief, that they:

1). Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2). Have not within a three year period preceding approval of their application, been

convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3). Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)2 of this certification; and

4). Have not within a three year period preceding approval of their application, had one or more public transactions (Federal, State or local) terminated for cause or default.

Section 9. The City hereby assures and certifies with respect to its application for a loan guarantee pursuant to Section 108 of the Housing and Community Development Act of 1974, as amended, that it has made efforts to obtain financing for the activities described herein without the use of such guarantee, that it will maintain documentation of such efforts for the term of the loan guarantee, and that it cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

Section 10. The City has and will continue to hereby certify, to the best of its knowledge and belief, the following:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any or cooperative agreement, and the extension, continuation, renewal amendment, or modification of any /Federal contract, grant, loan or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of grant, loan or cooperative agreement, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(c) It will require that the language of paragraph (a) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Section 11. Continue to maintain a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about the following:

1). The dangers of drug abuse in the workplace;

2). The grantee's policy of maintaining a drug-free workplace;

3). Any available drug counseling, rehabilitation, and employee assistance programs;

and

4). The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(c) Making it a requirement that each employee engaged in grant activity be given a copy of the statement required by paragraph (a).

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

1). Abide by the terms of the statement; and

2). Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)2, with respect to any employee who is so convicted:

1). Taking appropriate personnel action against such employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, and any other applicable federal and state laws; and

2). In appropriate circumstances, require an employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purpose by a Federal, State or local health, law enforcement, or other appropriate agency.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2003.

Mayor

ATTEST:

City Clerk

